

1 JACK S. SHOLKOFF, CA Bar No. 145097  
2 jack.sholkoff@ogletreedeakins.com  
3 PATRICIA M. JENG, CA Bar No. 272262  
patricia.jeng@ogletreedeakins.com  
3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
4 400 South Hope Street, Suite 1200  
Los Angeles, CA 90071  
Telephone: 213.239.9800  
5 Facsimile: 213.239.9045

6  
7 Attorneys for Defendant  
CARMAX AUTO SUPERSTORES CALIFORNIA, LLC

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 TRINIDAD HERRERA, TAROOB  
12 SIMANI and LUIS BERREGAN,  
individually and on behalf of all others  
similarly situated,

13 Plaintiff,

14 vs.

15 CARMAX AUTO SUPERSTORES  
16 CALIFORNIA, LLC, a Virginia limited  
liability company; and DOES 1  
17 Through 25,

18 Defendants.

19 Case No. 14-cv-00776-MWF-VBK

20 **DEFENDANT'S NOTICE OF**  
**MOTION AND MOTION TO**  
**COMPEL ARBITRATION**  
**PURSUANT TO THE FEDERAL**  
**ARBITRATION ACT [9 U.S.C. §§ 3**  
**AND 4] AND MOTION TO DISMISS**  
**PURSUANT TO FRCP 12(B)(1),**  
**AND/OR IN THE ALTERNATIVE,**  
**FRCP 12(B)(6).**

21 Date: May 26 2014  
Time: 10:00 a.m.  
Location: Courtroom 1600  
22 Action Filed: March 12, 2014  
Trial Date: None  
Judge: Hon. Michael W.  
Fitzgerald  
Mag. Judge: Hon. Victor B. Kenton

23

24

25

26

27

28

1 **TO THE CLERK OF THE COURT, PLAINTIFFS TRINIDAD HERRERA,**  
2 **TAROOB SLMANI and LUIS BARRAGAN AND THEIR ATTORNEYS OF**  
3 **RECORD:**

4 NOTICE IS HEREBY GIVEN that on May 26, 2014, at 10:00 a.m. or as soon  
5 thereafter as the matter may be heard before the Honorable Judge Michael W.  
6 Fitzgerald, in Courtroom 1600 of the above-entitled Court, located at 312 North  
7 Spring Street, Los Angeles, California 90012, Defendant CarMax Auto Superstores  
8 California, LLC, will and hereby do move as follows:

9 1. For an Order, pursuant to the Federal Rule of Civil Procedure 12(b)(1)  
10 and/or 12(b)(6) dismissing the entire action for lack of jurisdiction or failure to state  
11 a claim upon which relief can be granted, because Plaintiffs agreed to submit any and  
12 all claims arising from their employment at CarMax to binding arbitration, and  
13 because Plaintiffs' seven claims for relief all arise from his employment at CarMax,  
14 *or,*

15 2. For an Order, pursuant to the Federal Arbitration Act (9 U.S.C. § 3);  
16 staying the instant action, and compelling Plaintiff to arbitrate his claims for relief  
17 against CarMax upon an individualized basis, and dismissing Plaintiffs' class  
18 allegations.

19 This Motion is made following the conference of counsel pursuant to L.R. 7-3  
20 which took place on April 17 and April 21, 2014.

21 This motion is based upon this Notice, the accompanying Memorandum of  
22 Points and Authorities in support thereof, the supporting declarations of Kimberly  
23 Ross, Jack Sholkoff and Patricia Jeng, all papers and pleadings filed in this action,

24 ///

25 ///

26 ///

27 ///

28 ///

1 and any other evidence and argument as may be presented in connection with the  
2 hearing on the Motion.

3 DATED: April 24, 2014

OGLETREE, DEAKINS, NASH, SMOAK &  
4 STEWART, P.C.  
5

6 By: /s/ Jack S. Sholkoff

7 Jack S. Sholkoff

Patricia M. Jeng

8 Attorneys for Defendant  
9 CARMAX AUTO SUPERSTORES  
10 CALIFORNIA, LLC

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28